

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EDDIE ARMAIL JULIAN-BEY, WILBUR
LEONARD ROSEMAN-EL, MAURICE
LEVI KENNETH TYLER-EL, WILL
SYKES-BEY, HAROLD WINFIELD
CAGE-BEY,

Case No. 12-11363
Honorable Patrick J. Duggan

Petitioners,

v.

CATHERINE BAUMAN,

Respondent.

**OPINION AND ORDER SUMMARILY DISMISSING WITHOUT PREJUDICE
THE PETITION FOR WRIT OF HABEAS CORPUS AND DECLINING TO
ISSUE A CERTIFICATE OF APPEALABILITY**

Petitioners, several Michigan Department of Corrections' inmates who are members of the Moorish Science Temple of America, Incorporated, filed this action, claiming that they are being denied their right to practice their religion in violation of the First Amendment to the United States Constitution.¹ Petitioners bring the action as a petition for a writ of habeas corpus.

Promptly after the filing of a petition for habeas corpus, the Court must undertake a preliminary review of the petition to determine whether "it plainly appears from the face

¹When they initiated this action, Petitioners were incarcerated at the Chippewa Correctional Facility in Kincheloe, Michigan. According to the Michigan Department of Corrections' Offender Tracking Information System, all but two of the petitioners have since been moved to other prison facilities.

of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court.” Rule 4, Rules Governing § 2254 Cases; *see also*, 28 U.S.C. § 2243. If so, the petition must be summarily dismissed. *See id.* Having reviewed the instant petition, the Court concludes that it must be summarily dismissed.

Where a prisoner is challenging the very fact or duration of his physical imprisonment and the relief that he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a petition for writ of habeas corpus. *Preiser v. Rodriguez*, 411 U.S. 475, 500, 93 S. Ct. 1827, 1841 (1973). Habeas corpus is not available to prisoners who are complaining only of the conditions of their confinement or mistreatment during their legal incarceration. *See Martin v. Overton*, 391 F.3d 710, 714 (6th Cir. 2004); *see also Hodges v. Bell*, 170 F. App’x 389, 392 (6th Cir. 2006) (citing *Nelson v. Campbell*, 541 U.S. 637, 643, 124 S. Ct. 2117 (2004)). “[C]onstitutional claims that merely challenge the conditions of a prisoner’s confinement, whether the inmate seeks monetary or injunctive relief, fall outside of that core of habeas corpus and may be brought pursuant to [42 U.S.C.] § 1983 in the first instance.” *Hodges*, 170 F. App’x at 392 (quoting *Nelson*, 541 U.S. at 643, 124 S. Ct. 2117). By their own admission, Petitioners are not challenging their convictions or sentences, but instead the “various conditions of [their] confinement.” (Doc. 1 ¶ 4, emphasis removed.)

The Sixth Circuit has advised that where, as here, a petitioner has brought a habeas corpus petition attempting to challenge the conditions of confinement, the district court

must dismiss the action without prejudice to allow the petitioner to assert the claims properly in a § 1983 action. *Martin*, 391 F.3d at 714.

Accordingly,

IT IS ORDERED, that the petition for writ of habeas corpus is **DISMISSED WITHOUT PREJUDICE** and Petitioners are denied a certificate of appealability.

Date: May 2, 2012

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copies to:

Eddie Armail Julian-Bey
#144888
Alger Correctional Facility
N6141 Industrial Park Drive
Munising, MI 49862

Wilbur Leonard Roseman-El
#248250
Chippewa Correctional Facility
4269 W. M-80
Kincheloe, MI 49784

Maurice Levi Kenneth Tyler-El
#426844
Alger Correctional Facility
N6141 Industrial Park Drive
Munising, MI 49862

Will Sykes-Bey
#161285
G. Robert Cotton Correctional Facility
3500 N. Elm Road
Jackson, MI 49201

Harold Winfield Cage-Bey
#244367
Earnest C. Brooks Correctional Facility
2500 S. Sheridan Drive

Muskegon Heights, MI 49444